

1 Q Did you think it was necessary to get good  
2 engineering advice from him to be as accurate as possible?

3 A Yes.

4 Q Mr. Turro, I'll show you something.

5 JUDGE STEINBERG: When you said -- testified about  
6 Herman Hurst, would that include Mr. Hidle too?

7 THE WITNESS: I dealt probably 99 percent of the  
8 time with Herman. One percent of the time with Mr. Hidle.  
9 But I would treat Mr. Hidle the same way I would treat Mr.  
10 Hurst.

11 BY MR. NAFTALIN:

12 Q Did you deal with Mr. Hidle before this hearing  
13 today?

14 A Not that I recall.

15 Q Mr. Turro, I am putting in front of you a piece of  
16 equipment which we will wish -- you were ill and weren't  
17 here yesterday was put in front of Mr. Hidle yesterday.

18 Do you recognize this piece of equipment?

19 A I most certainly do.

20 Q What is it?

21 A it's a phase cancellation device that I purchased  
22 awhile ago.

23 Q Is that the phase canceler discussed in your  
24 supplemental exhibit, which is Turro Exhibit No. 32?

25 A The one and only.

1 Q Okay. That's the exact same one?

2 A Yes.

3 Q Okay.

4 JUDGE STEINBERG: Why don't you read the serial  
5 number into the record so that we know it's the same serial  
6 number as the one that Mr. Hidle read into the record?

7 THE WITNESS: Okay, I believe the serial numbers  
8 is, is that the model or the serial number on here? Oh, it  
9 would probably be model No. 2903; serial number 54/108  
10 10/94.

11 BY MR. NAFTALIN:

12 Q And the model number and manufacturer?

13 A 2903, made by Microwave Filter Company.

14 Q Is there anything on this that would -- well, when  
15 did you obtain this piece of equipment?

16 A Some time in October of 1994.

17 Q Okay. Is there anything on that piece of  
18 equipment which might confirm that?

19 A There is a date stamp on it of 10-94.

20 Q Okay. And what does that date stamp mean?

21 A Either when it was manufactured or purchased or  
22 shipped.

23 Q Okay. Oh, one more question for the Judge.

24 You testified you had to go up there occasionally  
25 and adjust this thing?

1 A Um-hmm.

2 Q What did you do?

3 A Just turned the knobs maybe an eighth of a turn,  
4 if that much.

5 JUDGE STEINBERG: Okay, so what Mr. Turro was  
6 doing he was turning a knob called "Phase 1," and a knob  
7 called "attenuator" a little bit. They are two separate  
8 knobs.

9 MR. NAFTALIN: Attenuation.

10 JUDGE STEINBERG: Attenuation.

11 MR. NAFTALIN: Thanks.

12 (Pause.)

13 BY MR. NAFTALIN:

14 Q Mr. Turro, you have entertained a number of  
15 questions about the letter you sent in, sent to the FCC in  
16 1991, seeking a ruling about whether you could enter into an  
17 arrangement with a primary station as a translator operator.

18 Mr. Turro, did you set out to deceive the FCC when  
19 you wrote that letter?

20 A No.

21 Q Did you try to pull the wool over the FCC's eyes  
22 or hide, in your mind, did you try to hide any important  
23 facts from the FCC to try and get something out of the FCC?

24 A No.

25 Q When you received the November 1991 letter from

1 Mr. Roy Stewart, the chief of the Mass Media Bureau, in  
2 response to your own letter, did you rely on that letter  
3 later on?

4 A Yes.

5 Q Did you rely on it when you entered into the  
6 arrangement with MMBI?

7 A Yes.

8 Q Okay. Did you honestly believe that you were  
9 acting within the terms of that letter written by Roy  
10 Stewart?

11 A Yes.

12 MR. NAFTALIN: One moment, please.

13 (Pause.)

14 MR. NAFTALIN: Your Honor, that concludes my  
15 questioning. Thank you.

16 JUDGE STEINBERG: Any recross?

17 MR. ARONOWITZ: I have -- very quick.

18 RECROSS-EXAMINATION

19 BY MR. ARONOWITZ;

20 Q Mr. Turro, going back to Mr. Riley's line of  
21 questioning with regard to MMBI's ability to preempt, reject  
22 or delete programming under the network affiliation  
23 agreement.

24 If MMBI effectively rejected all programming,  
25 would they still be entitled to compensation?

1           A     I would have to sit down and negotiate with them  
2     to clear the network commercials then.

3           Q     Okay. So, in other words, MMBI -- when you say  
4     "clear the network commercials," what do you mean?

5           A     The commercials that -- if they deleted the  
6     musical programming and everything else, they would have to  
7     clear the network commercials.

8           JUDGE STEINBERG: By "clear" meaning air them --

9           THE WITNESS: Broadcast them.

10          JUDGE STEINBERG: -- over the air?

11          THE WITNESS: Yes, Your Honor.

12          BY MR. ARONOWITZ;

13          Q     But would you still be required to pay them -- is  
14     it your belief that you would still be required to pay them  
15     the entire network --

16          A     Oh, yes.

17          Q     Okay. If the programming was deleted, and I think  
18     we will use Mr. Riley's example of, I think he said two  
19     times a week, even if he didn't, let's say two times a week  
20     MMBI decided they don't want Jukebox Radio --

21          A     I don't remember Mr. Riley saying that.

22          Q     I think it was in terms of a hypothetical.

23          JUDGE STEINBERG: Why don't you start another  
24     hypothetical.

25          MR. ARONOWITZ: Let's start it again.

1 BY MR. ARONOWITZ;

2 Q If MMBI deleted programming or otherwise rejected,  
3 preempted, whatever words you want to use, and let's say  
4 they did it, for purposes of this question let's say they  
5 decided two times a week, Mondays and Wednesdays they  
6 weren't going to carry the programming.

7 MR. NAFTALIN: Objection. Do you mean all day?  
8 Five seconds? What are you talking about?

9 MR. ARONOWITZ: All day.

10 MR. NAFTALIN: All day.

11 JUDGE STEINBERG: That's the way I interpreted it.

12 MR. ARONOWITZ: Just a hypothetical.

13 MR. NAFTALIN: I don't know what time.

14 JUDGE STEINBERG: I think he said Monday and  
15 Wednesday.

16 MR. ARONOWITZ: Just Monday and Wednesdays. Just  
17 Monday and Wednesdays they are not going to do it.

18 BY MR. ARONOWITZ;

19 Q What would go out over the translators?

20 A Whatever they are broadcasting.

21 Q Okay. With the network arrangement that you have  
22 with -- and I say "you" or companies controlled by you -- if  
23 the network arrangements that you have with MMBI were found  
24 to be improper, is somehow contrary to the FCC's rules, is  
25 it your understanding and belief that MMBI would still be

1 entitled to network compensation?

2 A Could you repeat the question, please.

3 Q If the network arrangement were found to be  
4 illegal under the FCC's rules, is it your understanding that  
5 MMBI would still be entitled to network compensation?

6 A Yes.

7 Q Okay. With respect to Mr. Naftalin's question  
8 with respect to the increase in the network compensation,  
9 and I believe you said that you had discussions with Mr.  
10 Weis with respect to that, did the two of you negotiate a  
11 figure or did Mr. Weis just tell you this is what he was  
12 going to do, this is what it was going to cost, and this is  
13 how it would affect the network compensation?

14 A I remember the specifics of the conversation, and  
15 it probably went something like this, "I would like to put a  
16 generator up there. And if I put it in there, would that  
17 benefit you?"

18 And I said, "It most certainly would. It would  
19 protect my equipment." And he said, "Well, it will run you  
20 about \$100 a month more for your affiliation agreement."

21 Now, I'm talking very loosely here because i don't  
22 really recall the conversation specifically.

23 So I said, "Yeah, \$100 a month is going to make or  
24 break the bank. That's not a problem by me."

25 Q Okay. Hopefully, this will be a great wrap up

1 question. After two weeks of sitting in this room, and in  
2 light of what you have read and what you've heard, is there  
3 anything -- is there anything that you feel that you could  
4 have done to be more candid with the Commission either  
5 during inspections or letters of inquiry at either of those  
6 times?

7 MR. NAFTALIN: Objection. Are you talking about  
8 remote possibilities? Or I mean, anything is possible. We  
9 have been through this.

10 MR. ARONOWITZ: Well, do you want me to get  
11 specific?

12 JUDGE STEINBERG: Sure, get specific.

13 MR. NAFTALIN: Yes, get specific.

14 BY MR. ARONOWITZ;

15 Q Is there anything that you might -- well, well, we  
16 were talking about surge protectors for electricity before,  
17 let's talk about surge protectors for inspections. And you  
18 would walk about -- that was an attempt at humor. Very  
19 weak.

20 During any discussions that you may have had with  
21 Mr. Loginow during any of the inspections -- this would be  
22 April, this would be when you talked with him on the phone,  
23 and it would be August, I believe, you spoke with him -- is  
24 there anything in retrospect you think you could have said  
25 to him that could have brought a better understanding as to



1 what was going on at the time?

2 MR. NAFTALIN: Objection. It's calling for  
3 speculation. He would have to read Mr. Loginow's mind to  
4 know what Mr. Loginow would better understand.

5 BY MR. ARONOWITZ;

6 Q Is there anything you wish you had said to Mr.  
7 Loginow?

8 JUDGE STEINBERG: I don't think you want to ask  
9 that.

10 MR. ARONOWITZ: All right. Let's leave it alone.

11 JUDGE STEINBERG: I don't think we want that in  
12 the record.

13 MR. ARONOWITZ: All right.

14 JUDGE STEINBERG: This is a family hearing.

15 THE WITNESS: Thank you for reading my mind, Your  
16 Honor.

17 MR. ARONOWITZ: I'll leave it alone.

18 JUDGE STEINBERG: I'm good at that too.

19 MR. ARONOWITZ: I have no more questions, but you  
20 may want to ask Mr. Helmick.

21 JUDGE STEINBERG: I think I will. Thank you.

22 MR. ARONOWITZ: Okay.

23 JUDGE STEINBERG: Mr. Helmick?

24 MR. HELMICK: No, Your Honor.

25 JUDGE STEINBERG: Mr. Riley?

1 MR. RILEY: No, Your Honor.

2 JUDGE STEINBERG: Okay, you are excused, Mr.  
3 Turro, and you may resume your normal life.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 JUDGE STEINBERG: And why don't we go off the  
7 record very briefly because we have to talk about findings  
8 and conclusions.

9 (Whereupon, a recess was taken.)

10 JUDGE STEINBERG: Okay, we are on the record.

11 While we were off the record, we discussed dates  
12 for proposed findings and conclusions. And it was agreeable  
13 that proposed findings of fact and conclusions of law will  
14 be due on February 27, 1998, and replies thereto will be due  
15 on March 20, 1998. There is flexibility within those dates.  
16 And if you want to make the findings later and leave less  
17 time for replies, agree among yourselves and let me know.  
18 You know, don't just file a motion. See if you can reach an  
19 agreement and then let me know, and I'll go along with it.

20 You can file joint findings if you want, anybody.  
21 If you and Mr. Riley want to file joint findings on the  
22 transfer control issue --

23 MR. NAFTALIN: Okay.

24 JUDGE STEINBERG: -- fine. If you want to file  
25 separate findings, fine. If the Bureau and Universal want

1 to file joint findings on part of the thing or the whole  
2 thing, fine. I don't care.

3 As I said off the record, I would rather have good  
4 findings than bad findings. And in this regard, before you  
5 pick up the pen to write, I want you to go back to the  
6 transcript, it should be pretty easy findings because it  
7 will be the last couple of pages, and reread what I have to  
8 say. I want your findings to be complete. That is, I want  
9 both sides to be -- there are going to be two sides in any  
10 story in this case, and I would like the findings to reflect  
11 both sides. I want the good facts in there as well as the  
12 bad facts. I want the findings to be objective. I don't  
13 want you to draw conclusions in your findings. Findings are  
14 these are what the facts are.

15 Now, you can explain to me the -- the bad findings  
16 would be so and so testified this. The good finding will  
17 be, you know, this, without labeling it so and so testimony,  
18 however so and so testified, the other way.

19 This is going to sound stupid but I want the  
20 findings to be accurate so that if I am reading a sentence  
21 and the sentence says A, B, C, D, and then there is a  
22 transcript citation, make the transcript citation either  
23 each sentence or each group of sentences relating to the  
24 same thing; not at the end of the paragraphs. That's just  
25 not good. So write findings A, B, C, D or E, and the

1 transcription reference or a citation to the record, I'm  
2 going to go read that, and if I find A, B, E, and I don't  
3 find C, D, you are not going to have a happy judge. Believe  
4 it or not that's happened, and you get the quickest way to  
5 make your findings and you're going to lose credibility with  
6 me is if you put stuff in there that's not on the pages you  
7 say they are or that's not in the record. I can understand  
8 typos. Try to keep them to a minimum.

9 Try to use the language that the witness used  
10 rather than paraphrase it. Use the words that came out of  
11 the witness's mouth because I check everything, and if you  
12 paraphrase in a way that matters, I'm going to change it  
13 back, and that takes time.

14 When you get to your conclusions, that's when you  
15 can editorialize on phrases. You can tell me -- that's  
16 where you explain away the bad facts. You tell me why they  
17 are not bad, or why they shouldn't be considered, that I  
18 shouldn't give them any weight, or how they can be  
19 rationally explained away, and how your opponent, you know,  
20 is the worst creature in the world.

21 Make your case citations accurate, and if you are  
22 citing to a page in the case, I would appreciate the page.

23 Anything else. Okay, replies, I will tell you  
24 that I like my replies. Some judges don't ever read  
25 replies, and I'll tell you I rely on replies heavily. I'll

1 love replies provided that they are done the right way. And  
2 what I consider the right way is basically a reply would say  
3 in paragraph such and such of the Bureau's proposed  
4 findings, or Mr. Turro's proposed findings it is stated.  
5 Don't paraphrase. This is incorrect because, and then you  
6 tell me why it's incorrect. The case is no good. The case  
7 is indistinguishable. On cross-examination, the answer was  
8 changed, et cetera. Just item by item specific specificity.  
9 This is wrong because on such and such and such a place they  
10 said this. You can't give that any weight because, things  
11 like that. You don't have to -- don't reargue what you  
12 argued in your findings because I am going to read the  
13 findings and you are just wasting time and space, and I'm  
14 not going to pay much attention to reargument. It's just a  
15 waste.

16 If you distinguish cases, if there are cases that  
17 aren't reliable, tell me why they are not reliable.

18 Any questions?

19 (No response.)

20 JUDGE STEINBERG: Okay, no questions, good.

21 Now, while we were off the record I was informed  
22 that Mr. Riley found a complete copy of what was in evidence  
23 as Turro Exhibit 37, and Turro Exhibit 37 was a -- there was  
24 a portion of the May 1, 1995, application filed by MMBI.  
25 And so what I have decided is to make the complete version

1 of that, the complete application Turro Exhibit 37A, and let  
2 me identify it for the record.

3 If you recall, it's a complete May 1, 1995,  
4 application filed by MMBI, and it's 10 pages in length, and  
5 that will be identified as Turro Exhibit 37A.

6 (The document referred to was  
7 marked for identification as  
8 Turro Exhibit No. 37A.)

9 JUDGE STEINBERG: And has everybody seen it? What  
10 I want to do is ask if there are any objections to the  
11 receipt of it into the record.

12 MR. ARONOWITZ: We looked at it yesterday.

13 JUDGE STEINBERG: Mr. Helmick?

14 MR. HELMICK: No, Your Honor.

15 JUDGE STEINBERG: Mr. Riley?

16 MR. RILEY: No, Your Honor.

17 JUDGE STEINBERG: Okay, so 37A will be received.

18 (The document referred to,  
19 having been previously marked  
20 for identification as Turro  
21 Exhibit No. 37A, was received  
22 into evidence.)

23 MR. NAFTALIN: Your Honor, could we pause for one  
24 second?

25 JUDGE STEINBERG: Yes.

1 (Pause off the record.)

2 JUDGE STEINBERG: Yes, you give that to the  
3 reporter. She will put a sticker on it. Then you've got  
4 permission to withdraw it and make copies and mail them to  
5 everybody.

6 MR. NAFTALIN: Thank you.

7 JUDGE STEINBERG: Okay, now, we've got the photos.  
8 I wouldn't mind -- well, this is going to be -- it's not  
9 going to be a problem, but you haven't had them developed  
10 yet?

11 MR. NAFTALIN: No, I have not.

12 JUDGE STEINBERG: But subject to their being  
13 developed and subject to their coming out, does anybody have  
14 any objection if today I assign numbers to them and receive  
15 them? Actually, how can I receive something that's not in  
16 existence, but let me assign numbers to them. We will call  
17 Turro Exhibit 38 the photos of the first demonstration,  
18 whatever you want to call that.

19 MR. NAFTALIN: Okay. The Monticello  
20 demonstration?

21 MR. ARONOWITZ: The Monticello component of the  
22 demonstration.

23 JUDGE STEINBERG: Well, whatever the first --

24 MR. NAFTALIN: We took pictures of the Monticello  
25 demonstration.

1 JUDGE STEINBERG: Yes, those go with Chart 1.

2 MR. NAFTALIN: Okay, but -- no, wait a minute. I  
3 see. Exactly. Right.

4 JUDGE STEINBERG: Yes, so that will be, you know,  
5 the first set up, the first way that the equipment was set  
6 up.

7 Turro Exhibit 39 will be the photos of the second  
8 set up or the second demonstration.

9 MR. NAFTALIN: The Fort Lee demonstration.

10 JUDGE STEINBERG: Yes. And Turro Exhibit 40 will  
11 be the photos of the phase canceler.

12 And when you get those ready, I don't know how  
13 many photos of each of those -- well, the phase canceler  
14 will be several, and the other demonstrations, it would  
15 depend on however -- there might be just one for each. Just  
16 package it up and attach it to a motion to me to receive the  
17 additional exhibits or something.

18 MR. ARONOWITZ: Not that I would even suggest that  
19 I would oppose such a thing.

20 JUDGE STEINBERG: Oh, no, it was just --

21 MR. ARONOWITZ: It would be pursuant to the  
22 Judge's order here is?

23 JUDGE STEINBERG: No, because I've got to grant  
24 the motion. They have to to get formally identified. For  
25 instance, I don't know how many photos there are --



1 MR. ARONOWITZ: Okay.

2 JUDGE STEINBERG: -- in demonstration one. I  
3 mean, that's my problem today. I would do it today if I  
4 knew.

5 MR. NAFTALIN: You've got to see them.

6 JUDGE STEINBERG: But I have got to see them to be  
7 able to intelligently identify them.

8 MR. NAFTALIN: But it will be the 38, 39 and 40  
9 we've just discussed.

10 JUDGE STEINBERG: Right, 38, 39 and 40, and then  
11 you package them up the way you want them, distribute them  
12 and attach them to a motion. If there is no objection, then  
13 I will grant the motion and at that point you will be  
14 directed to send an original and a copy to the reporting  
15 company.

16 MR. NAFTALIN: Okay. One motion for all three  
17 exhibits, is that okay?

18 JUDGE STEINBERG: Sure. Okay.

19 MR. ARONOWITZ: Is that exclusive of the charts?

20 MR. NAFTALIN: The charts are already marked.

21 JUDGE STEINBERG: The charts are already marked  
22 and introduced.

23 MR. NAFTALIN: And we are going to shrink them  
24 down.

25 MR. ARONOWITZ: Shrink them down.

1 JUDGE STEINBERG: Okay. Here is your "to do"  
2 list, Mr. Naftalin.

3 MR. NAFTALIN: Yes, sir.

4 JUDGE STEINBERG: Turro Exhibit No. 33, you need,  
5 that was Chart 1.

6 MR. NAFTALIN: Chart No. 1.

7 JUDGE STEINBERG: Okay. So you've got to get that  
8 back to the reporter. You've got to get the original and a  
9 copy back to the reporter and copies to us.

10 Turro Exhibit 34, which is Chart 2, you need to  
11 get the original and a copy back to the reporter and copies  
12 to us.

13 Turro 37A, you need to get the original -- what's  
14 been marked as the original back to the reporter and copies  
15 to us.

16 And then you have to deal with Turro 38, 39 and  
17 40.

18 When you've done 33, 34 and 37A, well, I guess you  
19 can just write a cover letter and say here they are. That  
20 way I know that you've done it.

21 MR. NAFTALIN: Okay.

22 JUDGE STEINBERG: So you can write a letter to the  
23 reporting company saying here is the original and a copy,  
24 and then maybe one to us saying here are your copies. That  
25 way I know it's been done.

1 MR. NAFTALIN: Okay.

2 JUDGE STEINBERG: And I can cross it off of my "to  
3 do" list.

4 Any questions?

5 MR. NAFTALIN: No.

6 JUDGE STEINBERG: What I'm going to do, and this  
7 is based upon many, many years of experience, is I'm going  
8 to close the record at this time. At the time that you get  
9 me 38, 39 and 40, I will reopen it, presumably -- assuming  
10 there is no objections, identify and receive the exhibits,  
11 and then reclose it. I am not leaving the record open for  
12 one second.

13 MR. NAFTALIN: Thank you.

14 MR. ARONOWITZ: Are you going to do this secretly  
15 in your office?

16 JUDGE STEINBERG: Do what?

17 MR. ARONOWITZ: Open and shut.

18 JUDGE STEINBERG: It won't be secret because you  
19 will get a piece of paper that says what I am doing.

20 Okay, anything further that we need to discuss?  
21 Mr. Aronowitz?

22 MR. ARONOWITZ: No, Your Honor.

23 JUDGE STEINBERG: Mr. Helmick?

24 MR. HELMICK: No, Your Honor.

25 JUDGE STEINBERG: Mr. Naftalin?

1 MR. NAFTALIN: No, Your Honor.

2 JUDGE STEINBERG: Mr. Riley?

3 MR. RILEY: No, Your Honor.

4 JUDGE STEINBERG: Okay, the record is closed, and  
5 I wish you all a very happy holiday season.

6 ALL: Thank you, Your Honor.

7 (Whereupon, at 3:40 p.m., the hearing was  
8 concluded.)

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**REPORTER'S CERTIFICATE**

**FCC DOCKET NO.:** 97 122

**CASE TITLE:** Gerard A. Turro

**HEARING DATE:** December 12, 1997

**LOCATION:** Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12/22/97

Shari R Bowman  
Official Reporter  
Heritage Reporting Corporation  
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**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 12/22/97

George Lee  
Official Transcriber  
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 12/22/97

Karen Adams  
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